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~~NO. 76-1278~~

In The
Supreme Court of the United States

OCTOBER TERM, 1976

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR, PETITIONER

v.

JACKSONVILLE SHIPYARDS, INC., ET AL.

MEMORANDUM IN RESPECT TO PETITION FOR A WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Jacksonville Shipyards, Inc. and Aetna Casualty and Surety Company suggest, in respect to the Solicitor General's Petition for Writ of Certiorari:

ADDITIONAL STATUTE INVOLVED

Section 2(3) of the Longshoremens and Harbor Workers Compensation Act, 44 Stat.1426, as amended, 86 Stat.1251, 33 USC, (Supp. V) 902(a) provided in part:

> (3) The term "employee" *means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations,*

and any harbor-worker including a ship repairman, and ship-breaker, ***.

STATEMENT

The Court below did not reach the question of the "status" of Perdue as a shipfitter "at the time of injury" as one then "engaged in" maritime employment. Yet the Court did agree with the Court of Appeals for the Ninth Circuit speaking through *Weyerhaeuser Co. v. Gilmore*, 528 F.2d 957, 960 (1975) that section 903(3) of the new act

> requires such a claimant to have been engaged in the the work of loading, etc. *at the time of the injury.* *** We therefore reject respondents' contention that an employee's general job classification (such as "longshoreman" or "ship repairman") will bring him within the Act's coverage regardless of the nature of the work which he was performing when he was injured." [Petitioner's appendix at 8a-9a]

It was the intent of Congress, as the Court below recognized, that to be covered under the Act a claimant had to be *"directly involved"* in a maritime task. [Petitioner's appendix at 9a]

But these concerns were not needful below as this case was determined on the basis of "situs". "Status" is nevertheless a vital issue.

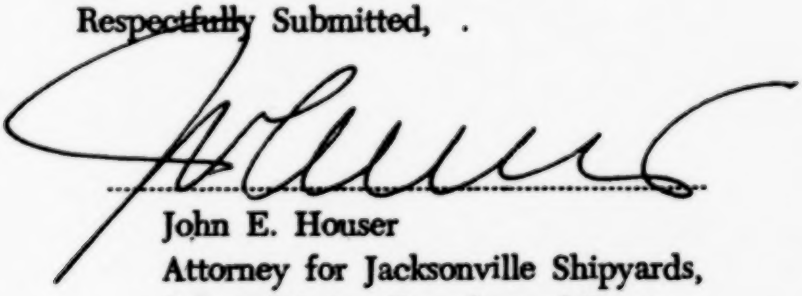
Further *Northeast Marine Terminal Co. v. Caputo*, No. 76-444, certiorari granted, December 6, 1976; *International Terminal Operating Co. v. Blundo*, No. 76-454, certiorari granted, December 6, 1976 do not control this case. Both Caputo and Blundo were about their duties, whatever they might have been. Perdue was not. He had laid down his tools,

taken off his exomis, gone from the work site and turned his attention to his off-duty pursuits.

CONCLUSION

While clarity is needed, such should include not only the question of "situs" but also "at the time of the injury" as to one "directly involved" in a maritime employment.

Respectfully Submitted,



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